

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CODY ALLEN CARR, :

Plaintiff : **CIV. ACTION NO. 3:24-CV-1085**

v. : **(JUDGE MANNION)**

SEAN BORDEN, et al., :

Defendants :

ORDER

In accordance with the Memorandum issued this date, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 2) is **GRANTED**.
2. Plaintiff shall pay the full filing fee of \$350.00 based on the financial information provided in the application to proceed *in forma pauperis*. The full filing fee shall be paid regardless of the outcome of the litigation. Pursuant to 28 U.S.C. 1915(b)(1) and (2), the Superintendent/Warden, or other appropriate official at plaintiff's place of confinement, is directed to deduct an initial partial filing fee of 20% or the greater of:
 3. The average monthly deposits in the inmate's prison account for the past six months, or
 4. The average monthly balance in the inmate's prison account for the past six months.
5. The initial partial filing fee shall be forwarded to the Clerk of the United States District Court for the Middle District of

Pennsylvania, P.O. Box 1148, 235 N. Washington Avenue, Scranton, Pennsylvania, 18501-1148, to be credited to the above-captioned docket number. In each succeeding month, when the amount in plaintiff's inmate trust fund account exceeds \$10.00, the Superintendent/Warden, or other appropriate official, shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to plaintiff's inmate trust fund account until the fees are paid. Each payment shall reference the above-captioned docket number.

6. The Clerk of Court is **DIRECTED** to send a copy of this order to the Superintendent/Warden of the institution where plaintiff is presently confined.
7. Plaintiff's claims alleging that defendants failed to protect him from harm by inmate D.S. and defendant Hinkle are **DISMISSED** as misjoined in violation of Rule 20 without prejudice to plaintiff's right to refile the claims in new lawsuits.
8. Plaintiff's claim alleging interference with his mail is **SEVERED** from this case. The Clerk of Court is directed to open a new case with respect to this claim. The caption of this new case shall be Carr v Cuffaro, et al. This order shall be docketed as Doc. 1 in the new case. No complaint shall be docketed in the new case at this time. The undersigned shall be assigned as the presiding judge in the new case.
9. Upon docketing the new case with respect to the severed claim, the Clerk of Court is directed to issue a 30-day administrative order in the new case requiring plaintiff to either pay the requisite filing fee or move for leave to proceed *in forma pauperis* within thirty days. Failure to comply with the terms of the 30-day administrative order will result in dismissal of the case without prejudice.
10. Plaintiff is directed to file an amended complaint in the new case within sixty (60) days of this order. Factual allegations in the amended complaint shall be limited to plaintiff's claim alleging interference with his mail.

11. Failure to file an amended complaint in the new case will result in dismissal of the case without prejudice.
12. Plaintiff's claims against defendant Kothe alleging violation of a Protection from Abuse order or violation of Department of Corrections policy are **DISMISSED WITH PREJUDICE**.
13. Plaintiff's deliberate indifference claim against defendant Kothe is **DISMISSED WITHOUT PREJUDICE**.
14. Within thirty (30) days of the date of this order, plaintiff may file an amended complaint with respect to his deliberate indifference claim against defendant Kothe.
15. Any amended complaint filed pursuant to this order shall be filed to the same docket number as the instant action, shall be entitled "Amended Complaint," and shall be complete in all respects. It shall be a new pleading that stands by itself as an adequate complaint under the Federal Rules of Civil Procedure.
16. The Clerk of Court is directed to mail plaintiff a civil rights complaint form with this order.
17. If plaintiff fails to file an amended complaint, his deliberate indifference claim against defendant Kothe will be dismissed with prejudice for the reasons stated in the accompanying memorandum, and this case will be closed.
18. Plaintiff's motion for leave to amend (Doc. 10) is **DENIED AS MOOT**.

s/ Malachy E. Mannion
Malachy E. Mannion
United States District Judge

Dated: September 25, 2024

24-1085-01-order